

UNITED STATES PATENT AND TRADEMARK OFFICE

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 12-12020-mr

6 | In the Matter of:

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8 RESIDENTIAL CAPITAL, LLC, et al.,

9

10 | Debtors.

11

13

14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 July 30, 2012

19 || 3:03 PM

20

21 BEFORE:

22 HON. MARTIN GEENN

U.S. BANKRUPTCY JUDGE

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2 Status Conference RE: Hearing RE: Sale Order (CC: Doc no.
3 538, 291, 292)

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. We're here in
3 Residential Capital, number 12-12020. Mr. Princi?

4 MR. PRINCI: Good afternoon, Your Honor. Your Honor,
5 I want to start with a housekeeping item. My office had, I
6 believe, e-mailed to chambers a document that the parties have
7 a copy of that I wanted to hand to the Court to use today to
8 assist us in walking the Court through the proposed order that
9 we submitted on Friday. I don't know if that --

10 THE COURT: Is this the summary of deadlines?

11 MR. PRINCI: It is, Your Honor.

12 THE COURT: I was just handed it a few minutes ago.

13 MR. PRINCI: Okay. Would anybody like additional
14 copies, because I have additional copies. Would any of your
15 clerks like?

16 Okay, well, Judge, before I jump in, let me frame this
17 for the Court. Obviously, at the last hearing there was
18 consternation by the Court and by the parties about the state
19 of affairs that we were in with respect to the then
20 disagreement amongst the parties regarding a scheduling order.
21 Judge, I'm happy to report, as you saw on Friday, that the main
22 parties have agreed to a single order. And that came about,
23 Your Honor, as a result of the very cooperative efforts by all
24 the parties, and in particular, Mr. Siegel and the rest of the
25 counsel for the trustees; Ms. Patrick and her team, on behalf

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1 of the institutional investors; and the Kramer Levin team, on
2 behalf of the committee. So I want to thank them for their
3 cooperation.

4 I'm also happy to report, Your Honor, that we learned
5 a short while ago that Nationstar's lenders have consented to
6 the requested two-week adjournment to the sale hearing. So
7 that now goes from November 5th to November 19th. And I'll get
8 to that when I walk you through the order. But with that, Your
9 Honor, if you will, the overhang to whether or not this was
10 truly firm is now gone. And I want to extend my thanks to the
11 Sidley firm for their efforts in expediting that consent, Your
12 Honor.

13 Your Honor, I know that you haven't had a long time to
14 review the proposed order. But what I thought I would do
15 today, subject to how Your Honor would like to handle this, is
16 maybe start by at least explaining to the Court what it is that
17 we have tried to accomplish, and then mechanically, how we
18 believe, hopefully, we've gotten there, and then, of course,
19 take the Court's questions, if that's okay with the Court?

20 THE COURT: That's fine. Go ahead.

21 MR. PRINCI: Okay. So, Judge, I think there are a few
22 things that we have tackled and that are covered by this order.
23 And let me get through the whereas clauses, the main purpose of
24 which, as Your Honor can see by reviewing the document, really
25 would provide the framework and the definitions that are

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1 necessary later on.

2 But the first part, Your Honor, really is the sort of
3 guts of the schedule. Those are -- and that additional sheet
4 we gave you, Your Honor, if you take a look, what we've done in
5 that summary of deadlines is really just to extract from this
6 order what, now, the dates are that are either going to be
7 subject to the Court's calendar, but more importantly, with
8 respect to the parties, they're deadlines for the parties to
9 commit to certain requirements under this order; mostly pre-
10 trial in nature.

11 And let me give you the highlights, Judge. I think
12 you could see that we have a commencement for fact discovery.
13 The reality is, Judge, that we've actually already begun that.
14 But I think the first sort of main line of demarcation
15 thereafter is on page 5, paragraph 7. And there you'll see,
16 Judge, that that's the date by which any party, with the
17 exception of the creditors' committee and the RMBS trustees,
18 has to file an objection to the 9019 motion, if they have one.
19 And that's October 5th.

20 And we all agree -- and obviously, Your Honor, the
21 creditors' committee in particular, is looking out for the
22 other creditors in the case, as the debtor. We all believe,
23 Your Honor, that October 5th certainly gives all parties in
24 this case enough time to determine whether they want to object
25 to this order.

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1 The reason, Your Honor, as you go forward, that you'll
2 see we have on page 6, paragraph 10, a separate deadline for
3 the committee and for the RMBS trustees, for October 15th, is
4 they're just going to be undertaking a greater review, and Your
5 Honor, appreciates that, I'm sure. So what we've done in order
6 to make this schedule work for everybody -- and it is
7 relatively truncated with respect to the amount of work people
8 have to do -- we've provided to the committee and to the RMBS
9 trustees, October 15th, for those parties to file any objection
10 they have.

11 I think the next important date, Judge, that follows
12 is in paragraph 13 on page 6, and that's the hearing date. So
13 we've settled on November 5th as the hearing date for the
14 present 9019 motion.

15 Thereafter, Judge, paragraph 14 on page 6; that
16 provides, Your Honor, that the RMBS trustees -- now bear in
17 mind, Your Honor, the Court will have heard the matter on
18 November 5th. And after the Court has an opportunity to
19 consider the evidence and make its decision, obviously a
20 decision will be rendered by the Court. And the thinking,
21 Judge, is that obviously that is a decision that the RMBS
22 trustees are going to consider with considerable weight in
23 terms of making their ultimate determination. By that point
24 they will be well along their way, though, Judge, to having an
25 independent position with respect to this matter.

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1 And in terms of their having to make the decision
2 whether or not to opt in, if the Court grants the motion, then
3 the trustees have to opt in on the later of either November
4 12th or five business days after the Court enters an order
5 approving the 9019 motion.

6 So what I'd like to do, Your Honor, is pause there,
7 because the next two sections get into somewhat different
8 matters, although this is all integrated. But let me just
9 pause there and see with respect to that pre-trial schedule and
10 that hearing date, if the Court has any questions?

11 THE COURT: Give me a second, Mr. Princi.

12 MR. PRINCI: Sure.

13 THE COURT: And I did go through the order before.

14 (Pause)

15 THE COURT: I understand -- I certainly understand the
16 rationale for different objection dates for the committee and
17 the RMBS trustees versus other objectors. Do you know, at this
18 point -- I mean, do you have indications at this point, who the
19 other potential objectors are?

20 MR. PRINCI: Certainly, Your Honor, we've had
21 discovery requests from MBIA and from FGIC two of the
22 monolines. We've had a meeting with Assured, a third monoline.
23 I can't say, Your Honor, what ultimately their intentions will
24 be. But when one files discovery requests this early on,
25 that's a possibility.

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1 THE COURT: One question or concern I have is you have
2 their objection, the other potential objectors' deadline for
3 filing their objections, before the close of discovery. And I
4 don't know whether I'm going to hear these last-minute requests
5 to move their objection deadline, because discovery hasn't been
6 closed.

7 MR. PRINCI: Judge, that is a -- I really think this
8 schedule works relatively conventionally. I think that's
9 probably the one area where it's somewhat unconventional. We
10 worked a long time trying to figure out how to deal with this.
11 That was the best we could do.

12 I would say the following, Judge. Number one, just by
13 way of further background for the Court, another reason why we
14 wanted to stagger those two deadlines, Judge, is one of the
15 things that will be presumably be helpful to the RMBS trustees
16 is to learn whether there are any other parties that file an
17 objection and what those parties have to say they believe are
18 the infirmities, if you will, with respect to the 9019 motion.

19 I think, Judge, that we tried to button this up as
20 tightly as we could. I can't say to you that it is not
21 possible that somebody might come in and have an issue with
22 that. But I will say this: this proposed order is on notice
23 to the parties that have the interest. For example, MBIA, Your
24 Honor, was part of the discussions that we had. They were
25 present throughout all of these discussions that led to this

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1 proposed order. I don't know whether they're here today; I
2 haven't looked. But it seems to me, Judge, that to the extent
3 that we don't hear an objection at this point to the way that's
4 staggered, I wouldn't think that somebody is likely to cause a
5 problem with this.

6 THE COURT: Well, I see the close of fact discovery is
7 September 24th. So that's before anybody's objection deadline,
8 under this proposed schedule.

9 MR. PRINCI: Correct. Keep in mind, Judge, if you
10 take a look at paragraph 6 on page 5; the debtors have an
11 obligation, Judge, to file any supplemental expert reports by
12 September 24. So any party in this case, Judge, is not going
13 to be blindsided.

14 THE COURT: Okay.

15 MR. PRINCI: All we're really doing, Judge, is just
16 giving the committee and the RMBS an additional grace. But we
17 don't believe, Judge, in any way, shape, or form, we're
18 inhibiting or taking away anything from any other party.

19 Judge, if Your Honor doesn't have any further
20 questions --

21 THE COURT: Let me just -- go ahead.

22 MR. PRINCI: Okay. So, Judge, the other two sets of
23 ordering provisions have to do with the following. And this
24 was --

25 THE COURT: Those were the ones -- you're getting into

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1 the area where I was less clear about what it is that the
2 parties are agreeing to.

3 MR. PRINCI: And that's understandable. And that's
4 sort of a cat's cradle of definitions. And that's why we tried
5 to set aside a glossary, at least for easy reference, if not
6 that it makes it that much easier to understand. But let me
7 first tell you what the parties are trying to achieve with
8 these two sets of ordering provisions.

9 What we have, Judge, is a situation where the trustees
10 are in the unfortunate position of potentially facing a sales
11 motion where, if they knew they were going to be ultimately
12 objecting to the 9019 motion, they might otherwise want to
13 assert certain objections to the sale motion. But on the other
14 hand, knowing that the sale motion and the proceeds thereof,
15 will ultimately benefit the investors in the trusts, they
16 certainly, I don't believe Judge -- I don't think I'm speaking
17 out of turn -- I don't think they want to do anything, Judge,
18 that's going to lead to the estate not being able to
19 successfully transfer assets in accordance with law.

20 So that is a difficult conundrum. What we've tried to
21 do, Judge, and what we've agreed to do, and the way we're going
22 to do it, subject to Your Honor ordering this, is, if you will,
23 bifurcate their objections. So on the one hand, Judge, in the
24 next set of ordering paragraphs on page 6 and on page 7, so
25 paragraph 15 and paragraph 16, this sets out the objections

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1 which the parties do not believe will in any way, shape, or
2 form chill a potential sale, and thus would be scheduled to be
3 heard, Your Honor, prior to the sale hearing.

4 And these are what we call the pre-auction objections.
5 And they're set forth in paragraph 16. And they really fall
6 into three categories. First, to the extent that the trustees
7 have any issues with any of the obligations that are not going
8 to be made part of the agreements that are being assigned to
9 Nationstar -- in other words a severing issue -- the trustees
10 can raise that, provided however, Your Honor, that these would
11 not be severing issues going to what is the biggest severing
12 issue; and that is, the debtor believes there's a couple of
13 legal ways in which the debtor can ultimately leave behind the
14 seller obligations, the so-called put-back obligations, that
15 are the heart of the claims that the investors through the
16 trusts have.

17 They're not going to contest that form of
18 severability. But in case there's any other issues that come
19 up about what was technically severed, they'll raise that prior
20 to the sale. So that's found in 16(a).

21 THE COURT: Because it appeared to me that this
22 proposed stipulation had substantive effects and not just
23 scheduling, that's why I want to be clear about what, if any,
24 objections the trustees are agreeing will not be asserted or
25 when they'll be asserted. This came up during the hearing last

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1 week, and you said it was an important part of what you thought
2 had been agreed with the trustees. But it's not a typical
3 scheduling provision, because it does seem to have substantive
4 effects, unless I'm misreading or misunderstanding.

5 MR. PRINCI: Your Honor, I'm not sure I'm clear on
6 what the Court is referring to when you refer to "substantive".

7 THE COURT: Well, I want to be sure I understand
8 what's pure scheduling and what's more substantive. The way I
9 was reading this, and perhaps misreading it, the RMBS trustees
10 were agreeing now that they wouldn't object to certain aspects
11 of the proposed transactions. That, to me, is substantive.

12 MR. PRINCI: Understood. Okay.

13 THE COURT: It's not just here's the schedule, but we
14 won't do that. Okay?

15 MR. PRINCI: Understood.

16 THE COURT: And I just want to be clear and have a
17 clear record about what they're agreeing now will or won't be
18 asserted. Not what will, because that they're waiting to see;
19 but what they're agreeing now --

20 MR. PRINCI: Okay.

21 THE COURT: -- won't be asserted as objections.

22 MR. PRINCI: So that's a good way, then, to make this
23 clear, Judge. Let me have you take a look at paragraph 17.
24 And let me give you a moment just to read that again to
25 yourself, Your Honor.

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1 THE COURT: I've read it.

2 MR. PRINCI: Okay. So, Judge, that is the focal point
3 to the answer to Your Honor's question. It is that which is
4 referenced in paragraph 17 that the trustees are agreeing to
5 forego in connection with the sale motion.

6 THE COURT: And when I read it, because it starts out,
7 "Subject only to the pre-auction objections," I then flipped
8 back to look at the pre-auction objections, and that's where I
9 just didn't have enough time to --

10 MR. PRINCI: Okay.

11 THE COURT: -- really work through it. I want to be
12 clear what's saved by the "Subject to" introductory clause, and
13 what is it that the RMBS trustees will not object to.

14 MR. PRINCI: Okay. So, Judge, let's go back to 16
15 then.

16 THE COURT: Okay.

17 MR. PRINCI: 16 gives you the three categories of
18 objections that the trustees, if they choose to, are going to
19 prosecute, which Your Honor will then hear on what will be the
20 new hearing for the sale motion, presumably November 19th,
21 subject to the Court's calendar. Okay?

22 THE COURT: I looked. That date works.

23 MR. PRINCI: Okay, good. And as I mentioned, the
24 first category is very limited, if you will, to potential
25 severing issues. And that's in contrast, Judge, for example,

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1 to what 17 refers to, where 17 says that they won't seek to
2 attempt to hold the sale up in any way, shape, or form, with
3 respect to the transfer of these contracts, including they
4 won't contest that there are any liabilities relating to the
5 so-called origination-related provisions. And you'll see a
6 reference, Judge, in the last sentence of paragraph 16, that's
7 a similar proviso, where it says, "The pre-auction objections
8 shall not include any objection by the trustees seeking to
9 impose any obligation or liability," and I'm paraphrasing, with
10 respect to the assigned RMBS contracts -- those are the ones
11 going to Nationstar or the highest bidder -- in respect of the
12 origination and sale of the mortgage loans, including, without
13 limitation, the origination-related issues.

14 THE COURT: Those claims are the subject of numerous
15 lawsuits, though?

16 MR. PRINCI: That's correct, Your Honor. Those are
17 the ones, Your Honor, that constitute the debtors' and the
18 institutional investors' agreement on an 8.7 billion dollar
19 allowed claim. And so what the trustees are saying is we will
20 not attempt to argue at the time of the sale, and
21 correspondingly try to hold the sale up or attach to the sale,
22 any of our rights respecting whether you can or can't sever
23 those provisions. Okay?

24 What they are saying they want Your Honor to
25 potentially hear, are three categories of objections, the so-

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1 called limited severing issues. And we're not really sure what
2 that is, Judge. They need a chance to be able to look at this
3 further. And if they can't resolve with us some issue in that
4 regard, then they may potentially argue to the Court that
5 there's something that's not being assumed and assigned that
6 should be. But won't be the Big Kahuna one, okay?

7 Then the second one, which is (b) in paragraph 16, is
8 really adequate assurance, Judge. Okay? And (c), which is the
9 third category, is sort of a subclass of adequate assurance,
10 Judge. In the PSAs there are certain conditions having to do
11 with, amongst other things, for example, the creditworthiness
12 of a servicer. So it has to be -- the rating agencies -- you
13 have to have a certain rating from the rating agencies.

14 Now, we believe 365(f) covers that and allows the
15 debtor to transfer these contracts, notwithstanding such
16 provisions. But at the end of the day, the trustees may well
17 take the position that whether or not 365(f) covers it from a
18 legal vantage point or not, we still think those very
19 conditions go to whether we have adequate assurance of future
20 performance.

21 I suspect Your Honor can see that we all believe,
22 Judge, that we're going to work these out. Now, that's no
23 guarantee from any of the parties. But these are the sorts of
24 things, Judge --

25 THE COURT: See who the successful bidder is, then

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1 maybe you'll know.

2 MR. PRINCI: That's a fair point. But subject to your
3 good point about who the successful bidder is, we do think
4 we'll work it out. We're certainly -- you won't get an
5 objection, Your Honor, before the parties have certainly worked
6 hard to work such issues out. Okay. So those are the pre-
7 auction ones. And if those objections are filed by August
8 23rd, then Your Honor will hear those as part of the motion on
9 November 5th, in connection -- excuse me, on November 19, in
10 connection with the sale hearing.

11 The rest of the ordering paragraphs, Your Honor -- and
12 I will say, this is the most complicated part -- relates to two
13 things. Number one, the objections to severing that have been
14 preserved, well, if the trustees -- I shouldn't say trustees.
15 Let's be technically correct. Any trust that opts in, what
16 does that mean? That means it is agreeing to the settlement
17 agreement that's the subject of the 9019 motion.

18 Now, working on the assumption that the Court has
19 approved that motion, and then you have the November, let's
20 say, approximately 12th date, when the trusts have to decide if
21 they opt in. Now, there are 392 trusts that are the subject of
22 the settlement agreement. And I think there's around eighty-
23 five percent of them have been given a direction from the
24 institutional investors. But there's another approximately,
25 Judge, 200 trusts that are not part of that settlement

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1 agreement.

2 We, the debtor, and the institutional investors,
3 believe that those trusts are not likely to have the issues
4 with respect to the put-back claims that these other trusts
5 have. And therefore, they weren't made part of the proposed
6 resolution in the settlement agreement. And there's a lot of
7 technical reasons, Judge, that we don't need to get into today,
8 as to why those other 200 or so trusts, we the debtors believe,
9 are not likely to become a big issue in this case.

10 But that having been said, the Court needs to be
11 aware, because the rest of the provisions do have to deal with
12 this, that the trustees are the trustees not only in the 392
13 trusts that are the subject of the settlement agreement, but
14 they're trustees for about 200 additional trusts. And so
15 they're going to have to make a decision through prudent man
16 standard, okay, with respect to all the trusts that they're
17 involved in.

18 So the next set of ordering paragraphs does two
19 things. Number one is, it sets up a -- it makes clear that to
20 the extent any trust should not opt in and therefore should
21 still have this reserved severance claim -- and the reason that
22 the opt-in is important, because if you opt in to the
23 settlement agreement, by the very terms of the settlement
24 agreement, you're releasing those so-called cure claims. Okay?
25 So you will no longer have those preserved, because you will

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1 have released them.

2 But to the extent any trust goes forward, meaning they
3 haven't opted in, then to the extent that they succeed with
4 those claims, in terms of -- that would be a cure claim. We,
5 the debtor, and the committee, and the other parties involved,
6 believe that as a matter of law, if you succeed in arguing that
7 the debtor was not entitled to sever those put-back provisions,
8 then we believe that in that situation, as a matter of law, you
9 have a cure claim.

10 So to provide adequate protection for the payment of
11 any cure claim, were it to be determined by the Court that
12 there is one --

13 THE COURT: If you can't sever -- let me stop you
14 there.

15 MR. PRINCI: Sure.

16 THE COURT: Why isn't it deemed a rejection if you
17 can't sever? You're saying -- I mean, the conclusion that it's
18 a cure claim assumes that that contract is being -- in total,
19 is being assumed.

20 MR. PRINCI: That's right. So let me make sure the
21 record is clear on this first. The debtor believes there are
22 two ways it can legally, ultimately sever the so-called put-
23 back obligations, from the rest of the servicing obligations,
24 and transfer just the servicing obligations. We have informed
25 the Court of the way we were going to go about this. That has

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1 now, also, Judge -- another piece of good news, that's actually
2 now been obviated. There won't be a need to do that, because
3 the trustees are agreeing not to contest the transfer to the
4 ultimate buyer, free and clear of this issue. Okay? So that's
5 another great benefit of what we worked on and agreed to.

6 THE COURT: That's one of the substantive effects of
7 this --

8 MR. PRINCI: Yes, Your Honor.

9 THE COURT: -- scheduling order.

10 MR. PRINCI: Paragraph 17 -- that is a knockoff
11 substantive effect of paragraph 17 in this order. But what
12 everybody's doing is reserving their legal rights.

13 So what might be before Your Honor someday? Well, the
14 trust -- any trust that doesn't opt in to the settlement and
15 wants to test this issue, would file an objection saying I
16 don't think the debtors had a legal right to do what they did.
17 Now, I know I can't go and reel it back in, but per this order,
18 if I'm right, this is a cure claim.

19 And the reason, in fairness, we're prepared to say
20 it's a cure claim, is while one way we believe you can do this
21 is to have certain debtor entities reject and then have other
22 debtor entities assume; if that were to fail, the only other
23 way to do this -- and this was done in the American Home
24 Mortgage case -- is to treat the contracts as really being two
25 contracts. Okay? And then as was done in that case, you

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1 assume and assign one, and leave behind the other.

2 If that does not pass muster under the law, then from
3 the trustee's vantage point, I think in fairness, what they're
4 saying is, look, under this contract, you had to pay the put-
5 back claim. You had to make us whole on that before you were
6 able to assign it. You had no legal -- the Court has found you
7 had no legal basis for severing this provision. Therefore,
8 before you could assign it, you had to make us whole where your
9 breach is, where your breach lies with the put-back claim. And
10 therefore, our put-back claim is a cure claim.

11 So that claim is being preserved in order to provide
12 adequate assurance that any cure claim, were the Court to find
13 that there is one, would be paid, we are agreeing to treat any
14 such allowed cure claim as an administrative expense.

15 THE COURT: And perhaps it reflects my own lack of
16 understanding of this, but when I saw that, one question I had
17 is whether other potential administrative creditors will have
18 objections by virtue of the debtor agreeing that these cure
19 claims would be treated as administrative claims? Is it
20 conceivable that the debtors would wind up as administratively
21 insolvent, that the amount you're agreeing to treat as
22 administrative claims, potentially a large group of claims that
23 might not otherwise be entitled to be treated as administrative
24 claims, and therefore potentially diluting the recovery of
25 other administrative creditors?

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1 MR. PRINCI: Your Honor, as a practical matter, I
2 believe that's virtually impossible, for the following reasons.
3 We're only talking about a cure claim if the sale's gone
4 through. Otherwise, by definition, there is no such thing as a
5 cure claim, if you haven't assumed and assigned. So let's look
6 at the consequence of the sale going through.

7 We're presently looking at an approximately 2.4
8 billion dollar amount of proceeds. So I think just stopping
9 there, I think we can -- I don't think anybody can feasibly
10 suggest that there really is any chance that this estate will
11 be administratively insolvent if the sale motion goes forward
12 and is granted.

13 THE COURT: Will other unsecured creditors be able to
14 argue that this is unfair discrimination because these claims
15 should be treated -- their claims should be treated as the same
16 level as -- the cure claims shouldn't be treated as
17 administrative claims?

18 MR. PRINCI: And there, I think not, again, Judge.
19 Because anybody who has a cure claim -- the trustees who are
20 really -- what they're doing, Your Honor, in connection with
21 this proposed order, is of tremendous value to this estate.
22 Because they have a right to prosecute these. And this could
23 turn out the wrong way for everybody depending upon how all
24 that lands.

25 So but if you have a cure claim, legally, you're

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1 entitled, we believe -- we the debtor believe, that you're
2 entitled to have your cure claim paid from those proceeds
3 before the rest of the estate gets them. So I don't see how an
4 unsecured creditor can complain about the trustees being given
5 an administrative expense here, because either way, the
6 unsecured creditors were going to be behind that cure claim
7 before they got a distribution from the proceeds.

8 Your Honor, I'm sorry, have I --

9 THE COURT: No, go ahead.

10 MR. PRINCI: Okay. So then if you take a look -- so
11 what we have here, Judge, the rest of what this attempts to do
12 is to deal with two things. Number one is, there is a cap with
13 respect to the amount of the cure claim. Because one could
14 well imagine, Judge, that given the kind of numbers you've
15 heard, 8.7 billion, as what we're proposing for the allowed
16 claim of these trusts, theoretically, you could be looking at
17 an astronomical potential cure claim.

18 So the amount of the cure claim has been limited by a
19 cap. And that cap --

20 THE COURT: That's the 600 million dollar cap?

21 MR. PRINCI: The 600 would be the max. But it's
22 reduced, Your Honor. But it's further reduced as set forth
23 here. But before I get into the weeds on that, I do want to
24 explain the other thing these paragraphs deal with.

25 They deal with the fact, Judge, that you've got to try

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1 to pro rate all this as against the trusts that accept, i.e.,
2 opt in, and the trusts that don't accept. Okay? And so we've
3 done that both definitionally and mechanically. By way of
4 definition, if you go to paragraph 14, you'll see that we use
5 pretty self-explanatory definitions: accepting trusts and
6 nonaccepting trusts. And you'll see that that, Your Honor,
7 works into these caps in subparagraph 18(b). You'll see that
8 the way in which the cap works is, as you read through that,
9 you'll see it is pro rata based on whether you're accepting or
10 nonaccepting.

11 So let me just pause there before I get to the rest,
12 which actually is -- 19 through 22 are relatively
13 straightforward. But let me just see if the Court understands
14 what those provisions are designed to do.

15 THE COURT: I'm not sure I'm prepared for a quiz right
16 now, Mr. Princi, but why don't you go on.

17 MR. PRINCI: Okay. Well, I'm going to -- you know,
18 Your Honor, I just had a sidebar with Mr. Eckstein, and I'm
19 going to leave it to Mr. Eckstein to maybe flesh that out a
20 little further. Your Honor, as I said, I think the rest of the
21 paragraphs are relatively straightforward, particularly as
22 against paragraph 18, which is not relatively straightforward.

23 But in addition, Your Honor, to the fact that this
24 proposed order has been painstakingly negotiated by the
25 creditors' committee, and is supported -- not just negotiated

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1 but supported by the creditors' committee, the debtor, the RMBS
2 trustees, the institutional investors; in addition, Your
3 Honor, I believe Ally is okay with this, the parent company. I
4 believe -- I haven't heard from any other party, Your Honor, a
5 number of whom were involved in these discussions in one way or
6 the other, that there's any objection to it.

7 And so I think this is -- when it comes to the
8 complicated issues in this case, this order, Your Honor,
9 provides great value and kind of takes the chaos and organizes
10 it tremendously, here. And as you point out, there are also
11 substantive benefits to this. So --

12 THE COURT: This is in the nit category -- I would
13 like the title of this document changed. I don't -- it's now
14 called "Revised Joint Omnibus Scheduling Order". Come up with
15 some more words. I mean, because there are substantive --
16 there are very substantive aspects to this. I don't want to
17 hear in November, somebody comes out of left field and says,
18 that was a scheduling order you entered. I didn't know there
19 was substantive effects from it.

20 So it may be a revised joint omnibus scheduling order
21 and provisions for other relief. I don't know. I just don't
22 want to hear later that when objectors come in that -- and this
23 is really -- I mean, those provisions really are impacting the
24 RMBS trustees, potentially the investors, by virtue of that.
25 But this is much more than just a scheduling order.

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1 MR. PRINCI: Your Honor, we will do that. And it is.
2 And in fact, I want to, Judge, point to two other things that I
3 failed to sort of up front. And that's sort of in the specific
4 obligations of the various parties with respect to deadlines.

5 If you go to page 4 and look at paragraph 2, it talks
6 about the debtor filing a supplement. One of the benefits,
7 Your Honor, of --

8 THE COURT: I guess you're filing another motion too?

9 MR. PRINCI: It'll be a supplement. We're not going
10 to redo this motion, Judge. And just so that Your Honor
11 understands, we have -- one of the benefits, and there were
12 many -- one of the benefits of us spending a lot of time
13 together, well into the night --

14 THE COURT: Sometimes that helps.

15 MR. PRINCI: It helped a lot, Judge. It helped an
16 awful lot. And one of the benefits, Judge, is that we realized
17 that there really are things that just needed to be clarified.
18 And so amongst and between the parties, we have a short list.
19 I'm actually going to be sending an e-mail to all of these
20 parties tomorrow, just confirming what we talked about.

21 Just by way of example, one of those things -- you've
22 heard me say this in open court before, I'll say it again --
23 the 9019 motion is detached from the plan support agreement
24 that we have with these same institutional investors. So it
25 does not have any connection to the Ally issues that are being

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1 examined by the examiner, et cetera, et cetera. And we'll make
2 that -- we'll actually say that up front in the motion, if that
3 will be helpful for people, et cetera.

4 So we have a few items that we all discussed that we
5 think we need to clarify either in a motion, and in one
6 particular instance, also potentially in the settlement
7 agreement itself. And we're going to do that.

8 The other thing I just want to inform the Court,
9 because I don't think this would be obvious what our intentions
10 were with respect to this for the Court. There is a deadline
11 here, Judge. I just need to find it. So please just give me a
12 moment.

13 It is the fact that we are going to be working -- it
14 may be expressed, and I'm just missing it while I'm on my
15 feet -- but we're going to be working, Your Honor, on a
16 proposed order for the 9019 motion. And Your Honor is well
17 aware, because it's come out at these hearings on this, that
18 there are difficult issues that the trustees need to balance in
19 doing their job. And so the proposed order, Your Honor, which
20 we will present to the Court well in advance, Judge, of the
21 9019 hearing, will be designed to -- it'll have input from the
22 trustees and of course the committee and everyone else that's a
23 major party here, Judge. And it'll be designed to try to deal
24 with some of those.

25 But what we'll make sure we do is to get to you and

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1 present that to you early, allow the Court to schedule, if you
2 want, with us, either a court session or a chambers session to
3 discuss why we have these proposed findings. Now, all of that,
4 Judge, in due course. And of course, none of what we put in
5 the order, by way of any proposed findings, will be
6 inconsistent with what we present at the hearing. So anything
7 that we have in that order, that means we intend to cover that
8 at the hearing.

9 I just do want to -- that wouldn't have been obvious,
10 our intention from this order. And that is the intention of
11 the parties, Judge.

12 THE COURT: Okay.

13 MR. PRINCI: Judge --

14 THE COURT: I will have some other comments. I'm
15 going to save them, and questions. Okay?

16 MR. PRINCI: Let me cede the podium to Mr. Eckstein.

17 MR. ECKSTEIN: Your Honor, good afternoon. Kenneth
18 Eckstein of Kramer Levin on behalf of the official creditors'
19 committee.

20 Your Honor, first I'm going to echo Mr. Princi's
21 remarks complimenting the parties for working together and
22 constructively. And I'll certainly include the Morrison &
23 Foerster team, on behalf of the debtor, in feeding us late into
24 Thursday night and working, I think, constructively, to
25 coalesce a lot of difficult issues where there were very

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1 disparate viewpoints and interests.

2 Number two, I'd like to highlight, I think, a couple
3 of the areas where the committee feels the greatest heartburn
4 on this motion, because there are several issues that Your
5 Honor has started to identify that are not simply scheduling,
6 they're quite substantive, and they could affect the case as it
7 runs its entire course.

8 The first is timing. As Your Honor sees from the
9 schedule, the parties have ultimately agreed to a tight time
10 schedule. It essentially has the parties conducting near-term
11 discovery. And to the extent there are going to be parties who
12 are going to be doing independent evaluations of the proposed
13 settlement, certainly, the committee and the RMBS trustees, and
14 there may be other parties as well, the parties have agreed
15 that expert reports are going to be submitted really in about
16 two months. And that's fast.

17 And I don't want to give Your Honor the impression
18 that people were enthusiastic about the schedule. I think
19 there was a practical recognition that one of the essential or
20 important elements of this was to complete this process before
21 the Court considered the sale hearing. And while we did obtain
22 from Nationstar an agreement to extend the sale hearing out by
23 two weeks, it still did not leave a significant amount of time.
24 And in order to permit the discovery of the experts, the filing
25 of objections, and the filing of replies, consistent with Your

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1 Honor's schedule to conduct a hearing of this complexity, this
2 was the schedule that parties ultimately were able to agree
3 upon.

4 We're very much relying upon the full and complete
5 cooperation of the debtor in terms of making the information
6 available. And I'm hopeful that this will provide adequate
7 time. Needless to say, if there are problems, parties will
8 have to come back and deal with it. But that's not something
9 that we're doing today. And Mr. Princi is right; all the
10 parties that Mr. Princi described are willing to work with this
11 schedule.

12 We had a committee call this morning. And I tried to
13 impress upon the committee members the various elements of this
14 agreement as it was finalized. And I think that people are all
15 going to try to work with this schedule. And hopefully, we're
16 not going to have the need to come back. And if we do, Your
17 Honor will deal with that.

18 Number two, Mr. Princi did indicate that a supplement
19 is going to be filed. Obviously, we're going to -- everybody's
20 going to be very focused on the substance to that supplement.
21 The letter that Mr. Princi described that he's going to be
22 providing tomorrow, laying out the elements that we're going to
23 see in the supplement, I believe will be consistent with the
24 items that we've already discussed, and hopefully will give
25 parties clarity on what modifications to expect. And we're

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1 assuming that there are not going to be any material new
2 changes that are going to sort of move us in a different
3 direction.

4 But that's a very important submission. And we feel
5 it's very important for all parties, not just the parties who
6 were participating in this negotiation, but all parties in this
7 case, to see the filing by August 15th, so that they have ample
8 time to know, with detail, what precisely everybody is
9 responding to. And given the complexities of this, I trust
10 that the supplement will describe in the motion itself, all
11 substantive provisions that people should really be aware of
12 that could affect their evaluation of the settlement. And I
13 think this will give us ample time to do that in a clear and
14 comprehensive fashion.

15 The next item I wanted to bring to Your Honor's
16 attention is the discussion that Mr. Princi had with you of the
17 pre-auction objections and what we consider the potential
18 claims that could give rise from that. That is the first
19 category of administrative claims or potential administrative
20 claims or cure claims, that we are dealing with.

21 One of the difficult elements of this agreement is
22 that all parties are making a lot of assumptions that, at this
23 point in time, are not based on any level of certainty, or
24 really very little diligence. We have as much information as
25 we've been able to collect, to date. But people do not know

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1 with any certainty what types of pre-auction objections will be
2 asserted by the trustees.

3 We have representations that these will not be
4 significant or material, relative to the size of this case.
5 And hopefully that will be the case. Moreover, we're hopeful
6 that between now and when these claims are filed, that there'll
7 be an ample opportunity for the trustees and the debtor and the
8 committee to speak with Nationstar, which is the stalking-horse
9 bidder on the servicing platform. And our goal is that many of
10 these concerns will be resolved in discussions with Nationstar,
11 so that there will not need to be claims filed, but that in
12 fact, the trustees can get comfort that many of their concerns
13 will be dealt with by the purchaser in the ordinary course, on
14 an ongoing basis, post-closing.

15 THE COURT: Let me just stop you there. Because I
16 deferred raising this with Mr. Princi, but this is an
17 aggressive schedule. And the question I have is whether it
18 builds in any time or sufficient time for negotiations.
19 Because the last point you make, Mr. Eckstein, I just fully
20 anticipate before the evidentiary hearings starts in this, the
21 parties will sit down and knock heads and really try and see
22 whether you can resolve -- wishful thinking -- all of the
23 issues, some of the issues, whatever.

24 And with this aggressive schedule, the debtors' reply
25 brief -- discussions don't have to await for then -- but the

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1 debtors' reply brief is October 29th, and with a hearing
2 commencing on November 5th. So that's actually one of the big
3 concerns. So one of the concerns I have is time for the
4 parties to be able to try and resolve -- negotiate, resolve as
5 many issues as possible. And the second, and I guess I'll ask
6 Mr. Siegel about this when he comes up, is what process are the
7 trustees going to set up with the investors? Because I mean I
8 think I fully expect the trustees don't want to get too far out
9 front of the investors.

10 We've talked before about what this provision is,
11 twenty-five percent being able to direct the action, will you
12 follow or won't follow. But it seems to me that there are a
13 number of things that have to work parallel. One, a process of
14 the RMBS trustees with the investors; second, a dialog between
15 the debtors, the committee, and the RMBS trustees; all of this
16 going on while you've got discovery going on.

17 So I do have a concern that there's not enough built
18 into this. And I don't want to complicate the schedule.
19 Assuming I'm likely to agree to the schedule, I think that you
20 all ought to work now on agreeing on an unofficial schedule by
21 which, without prejudice to anybody's rights, claims,
22 objections, that you will share preliminary objections. And
23 you probably have already done this. I mean, it's not a
24 mystery. But until you've done -- as you're doing your
25 discovery.

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I mean, I think you ought to be setting up a process that has informal meetings that aren't to discuss the discovery disputes or anything like that, but actual -- to see whether, as issues are arising, whether you can talk through them. I'm not compelling you to do that. But I'm just afraid you're going to get to the end of this schedule, and it's going to be a frantic path that you -- people are going to be getting ready for an evidentiary hearing; exhibits, et cetera, and all that; get their witnesses ready. And at the same time they're going to be trying to resolve whatever they can resolve. So I do have a concern about that.

MR. ECKSTEIN: If I may, let me take it in a couple of pieces. With respect to how the trustees are going to deal with the investor community, that is something that has been contemplated here. And I think it would be useful for Mr. Siegel or one of the spokespeople for the trustees to address that precisely. Because that's been anticipated. And I think that that will help significantly in sort of smoothing the path for the trustees to make a decision.

With respect to the particular issue I was starting with, which was the pre-auction objections; that deadline is August 23rd. I think Your Honor can take some comfort in the fact that discussions have already commenced between the trustees and Nationstar, as the stalking-horse bidder, and the other parties in the case, to see whether or not these precise

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1 objections can get resolved. And again, being somewhat
2 optimistic on this point, I think there is enough time between
3 now and August 23rd for those issues to be worked out. And
4 based on what I've heard so far, I'm encouraged that many, if
5 not all, of those objections can be satisfactorily resolved on
6 a business level by that deadline.

7 If those objections can get resolved, what it would
8 mean is that there will not be pre-auction objections. If it's
9 not resolved, I think the pre-auction objections will get
10 filed. The one amendment that I was going to suggest to Mr.
11 Princi's schedule is, in the event the pre-auction objections,
12 which are, again -- those are the traditional servicing type of
13 claims, not put-back claims -- if those have not been worked
14 out satisfactorily --

15 THE COURT: Give me an example of what those would be.

16 MR. ECKSTEIN: Basically ongoing indemnities, what
17 about taxes that might still be due and owing. They're not
18 small numbers. But relative to the 2.4 billion dollar purchase
19 price, they're numbers that we believe are considered more
20 ordinary course.

21 But nonetheless, there are issues that are of concern
22 to the trustees and there are really of concern to the
23 purchaser. And they have to figure out a way to balance that
24 out in a businesslike manner. We think that can be done. It's
25 been done in other situations and hopefully can be done here.

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1 But the suggestion I was going to make is in the event the pre-
2 auction objections have not been worked out, I think it
3 probably would make sense to actually set those down for a
4 hearing prior to November 19th. Although I don't think we need
5 to fix that date today, I think we wait and see whether or not
6 any objections are filed, and then we can come back and decide
7 what the schedule is.

8 But it might make sense to set those down for a
9 somewhat earlier hearing, if they, in fact get filed. And so I
10 just wanted to flag that. Because even if they're not resolved
11 by August 23rd, they could get resolved before a hearing date.
12 So that's one type of objection.

13 We're concerned about those. We would obviously, from
14 the committee's standpoint, we would like to eliminate those
15 objections and would try to do what we can to ensure that's the
16 case. And obviously, to the extent those are resolved with the
17 purchaser by August 23rd, it'll be known to any third party who
18 might submit a competing bid that those have been resolved, and
19 bidders can take account of how that's dealt with in connection
20 with any supplemental filing that's made.

21 The next category of concern was the last item that
22 Mr. Princi was talking about with respect to the cure claims.
23 It is quite complex. And it took us a lot of time. It's a
24 real balance. The benefit -- one of the benefits of this
25 agreement is that the trustees and all parties have agreed to

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1 allow the sale to go forward without objections. We believe,
2 Your Honor, that that is going to maximize the value of the
3 transaction. And we believe it will stimulate bidding at the
4 highest possible level, which should redound to the benefit of
5 the estate. And so that's a plus.

6 If there was litigation with the trustees leading up
7 to the sale, it might not derail the sale, but it could
8 certainly distract the sale, and probably would be taken out of
9 the purchase price, just by people being skittish. And so
10 hopefully this will redound to the benefit of the estate.

11 Now, on the other hand, we understood that until the
12 trustees have made a decision whether they're going to opt in,
13 we don't know whether or not they are or are not going to want
14 to assert the sort of large cure claims that would essentially
15 result from whether or not it was or was not appropriate to
16 sever the origination from the servicing, and therefore,
17 potentially give rise to a cure claim that's related to the
18 put-back litigation.

19 Obviously, if those claims get asserted, that will be
20 a major litigation. And nobody is waiving any rights at this
21 point in time, with one exception. If the trustees do not opt
22 in -- as Mr. Princi explained, it may not be all or nothing; it
23 may be that they opt out for some trusts, they opt in for other
24 trusts -- and so the paragraph that Mr. Princi explained,
25 paragraph 18 has a pro rata. So whatever caps are provided

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1 there are pro rata and will come down.

2 From the committee's standpoint, Your Honor put your
3 finger on it. Looking at it this from the standpoint of the
4 unsecured creditors, we do not want to find ourselves in a
5 situation where we have swamped this estate with administrative
6 claims. On the other hand, we felt it was advantageous for the
7 sale to go forward and to defer this fight until it became
8 necessary and not to front load this debate.

9 And so obviously, the first sort of level of defense
10 is, the trustees may ultimately decide to opt in to the
11 settlement. If they opt in to the settlement, there will be no
12 claims that get triggered by paragraph 18. It'll be a zero.
13 In the event the trustees do not fully opt in, the question
14 is --

15 THE COURT: Assume the worst. What happens if they
16 just don't opt in, period?

17 MR. ECKSTEIN: If they don't opt in, then there'll be
18 a lot of questions that Your Honor will have if they don't opt
19 in. But the question will really be, what is the significance
20 of the settlement? How does it apply? I'm told -- and again,
21 this remains to be seen -- the likelihood of there being no
22 participation in this settlement, I don't want to say is -- it
23 seems extreme at this point in time, but it's possible.

24 And so let's assume they don't opt in. Okay. So this
25 paragraph contemplates that. In that event, the trustees will

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1 assert a claim that essentially says that the put-back claims
2 are not severable from the transfer of the portfolio, and
3 therefore, in order to transfer the portfolio, the debtor -- or
4 the purchaser, essentially, had to assume the put-back claims,
5 and therefore cure.

6 Now, we know nobody is going to buy this portfolio if
7 they had to assume all the put-back litigation. Just was not
8 going to happen. So therefore, this is sort of a architecture
9 that is providing for the ability to sell and then deal with
10 how to sort of allocate the proceeds. So there'll be a
11 litigation over whether or not, as a legal matter, there was or
12 was not an obligation for a purchaser to have assumed the cure
13 claims with respect to the put-back litigation.

14 Your Honor may determine that the debtor was within
15 its rights legally to have sold free and clear, in which case,
16 there'd be no cure claim. And whatever claim ultimately the
17 trustees have will be a general unsecured claim. And if the
18 trustees don't opt in to this settlement, there'll be a trial
19 in the future as to what the appropriate amount of the
20 unsecured claim would be. That's not something we would have
21 to deal with today. But it will clearly be something that'll
22 be pivotal to a plan, and we'll have to have a separate hearing
23 and a process on how to deal with the claims.

24 In the event Your Honor determines that there was no
25 right to sever, and that there was an obligation to assume

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1 these claims, what paragraph 18 says is that there'll be a cap
2 on these claims. And there's a dual cap. The first cap Mr.
3 Princi identified was 600 million dollars. But what paragraph
4 18(b) says, it's the lesser of the aggregate sale proceeds for
5 all settlement trusts or 600 million dollars. So what you
6 really need to do is go into the definition and look at the
7 sale proceeds that are attributable to the trusts that don't
8 opt into the settlement. And we, in fact, believe -- we don't
9 have to get into the details -- we believe that the relevant
10 sale proceeds that are going to be at issue, are in fact, less
11 than 600 million dollars. We think it's materially less than
12 600 million.

13 Again, this is not something for today. But our view
14 is, it is materially less, and Your Honor will have to
15 obviously consider that. But we think that the amount of
16 potential exposure is a small fraction of 600 million. But
17 just as belt and suspenders, we have an aggregate cap of 600
18 million.

19 In addition, if fifty percent of the trusts opt in and
20 fifty percent of the trusts opt out, the aggregate cap will be
21 300 million, and the sale proceeds will be fifty percent of the
22 maximum sale proceeds, because half the trusts will have opted
23 in.

24 So there's a lot of ways for the cap to come down to a
25 much lower number so that we ultimately satisfied ourselves

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1 from a committee standpoint that the likely exposure is boxed
2 in enough different ways that the potential administrative
3 claim relative to the -- certainly to the 2.4 billion dollars,
4 but even to what is likely to be available to unsecured
5 creditors after you satisfy the DIP and other secured
6 obligations, we believe is a manageable, appropriate number,
7 and is a sensible, essentially, trade today, for the ability to
8 let the sale go forward on the best possible terms.

9 THE COURT: Wait. I don't want to come out of left
10 field on this. But is this, itself, a substantive settlement
11 that has to be judged? I mean, you've packed into a scheduling
12 order quite substantive provisions. And I mean, why isn't this
13 a 9019? Why -- first off, do the RMBS trustees have the
14 authority to agree to these substantive provisions?

15 MR. ECKSTEIN: There's a lot -- Your Honor, there's a
16 lot of substance here. And again, I'm trying --

17 THE COURT: The last thing I want to do is -- I mean,
18 this seems to make good sense to me. But I also want to make
19 sure I'm not missing the forest for the trees. Is there --

20 MR. ECKSTEIN: I don't think you're missing the forest
21 for the trees, Your Honor. And I think these are questions
22 that we've all been asking ourselves. And we do think that
23 we've set up a format that is best designed to lead to a
24 consensual resolution of a very, very thorny problem.

25 Now, again, I haven't begun to address whether the

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1 committee is satisfied that 8.7 is an appropriate settlement.
2 We may decide that it's way too high. And in that case, we'll
3 have to obviously weigh in on that issue. But assuming this is
4 ultimately determined to be a reasonable settlement, we believe
5 that there is a mechanism in place right now that maximizes the
6 ability of all parties: the trustees, the investors, and the
7 estate, to resolve a very difficult, thorny problem that would
8 likely consume years of litigation, and I hate to say, tens and
9 tens of millions of dollars of expense or more. And we have a
10 mechanism right now that seems to be designed to lead to a
11 consensual resolution of a very difficult problem in a
12 relatively prompt period of time in a way that will give all
13 parties a great deal of comfort, without waiving rights.

14 And at this point in time, from the estate's
15 standpoint, Your Honor, we don't believe that anybody is
16 waiving any claims. We think the estate's getting the benefit
17 of some agreed-upon -- some business agreements with respect to
18 caps on what claims will be asserted. And we think the estate
19 can receive the benefit of that.

20 The trustees have given a great deal of thought -- and
21 I'll let them obviously speak to it -- but the trustees have
22 obviously given a great deal of thought and consideration to
23 what is and is not appropriate at this stage. And I believe
24 the trustees will tell you that they are comfortable with
25 proceeding with the order as it's currently structured. And it

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1 defers to a later date the rights of all parties to make
2 whatever arguments and submissions have to be made, if those
3 litigations become necessary.

4 So we felt that on balance, the estate was getting
5 good benefits from this, and that the Court need only deal with
6 these claims in the event circumstances warrant and based upon
7 decisions that get made over the next couple of months. And
8 that's what led us to recommend that this was a sensible way to
9 proceed; although I agree with Your Honor that this is not
10 simply a garden-variety scheduling order. It is far from it.

11 THE COURT: Thank you, Mr. Eckstein.

12 Mr. Siegel?

13 MR. SIEGEL: Good afternoon, Your Honor. I'm Glenn
14 Siegel from the Bank -- representing the Bank of New York. I'm
15 with Dechert. Just to make sure that no stone is left unturned
16 on the thanks being expressed to everyone, of course we thank
17 Morrison & Foerster and Kramer Levin for their hard work. I
18 should mention our co-trustees, which are Deutsche Bank,
19 represented by Morgan Lewis; U.S. Bank represented by Seward &
20 Kissel; Wells Fargo, represented by Alston & Bird. Also, the
21 institutional investors were integral to this, and Ropes & Gray
22 and Gibbs & Bruns were very heavily involved as well.

23 From our standpoint, there were a lot of things going
24 on here that the trustees needed to get comfort with in order
25 to be able to go forward. It was a very important component of

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1 this that we have the opportunity to have a supplemental motion
2 filed, which we think will give us a great deal more comfort in
3 the process.

4 THE COURT: You haven't seen it yet. I don't know.

5 MR. SIEGEL: Well, we talked about it. If it's what
6 we've talked about, I think we'll be okay. And we've spent a
7 lot of time talking about it.

8 Your Honor, also Mr. Eckstein mentioned the issues
9 about as they relate to the sale. Your Honor, I would suggest
10 to you that what's really going on here is a deferral of rights
11 by the RMBS trustees in connection with the sale that we have
12 agreed to, that for the moment, absent the 600 million dollar
13 issue, that there really isn't anything that is being finally
14 resolved with respect to any of our trusts.

15 And with respect to the 600 million dollar issue,
16 while I respect and appreciate Mr. Eckstein's view that that
17 number is substantially less, we of course believe it to be
18 substantially more. And by the way, Your Honor, that's another
19 reason why we could agree on a number that was different.

20 With respect to authority, as we've talked about
21 previously; this is different than the typical trust indenture
22 that we encounter in bankruptcy cases. For better or worse,
23 the trustees have authority to act under these documents. We
24 can enter into this agreement. The question is what our
25 tolerance is for holders who might disagree with us. We think

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1 in this context, under these circumstances, particularly
2 involving an issue where we were very concerned about two
3 issues: one is maximizing the value of the sale itself; and
4 the other is providing for a smooth transition of our servicing
5 rights to a new servicer that's financially viable; we thought
6 this was a very reasonable outcome vis-a-vis our certificate
7 holders. And that's why we are comfortable with the outcome.

8 As we said, there are very good and substantial issues
9 here that we are deferring to another day. Just to be clear,
10 so that there's no surprise down the road, in the event that
11 this actually becomes a relevant issue, there are three
12 possible parties who would be liable for put-back claims.
13 There are the originators of these loans; there are the
14 depositors of these loans; and then finally, there is the
15 servicer entity itself, which had obligations to provide
16 notice, and in some instances, enforce these claims.

17 In some instances these are the same debtors. In some
18 instances these are different debtors. These are very complex
19 and thorny issues. And I very much agree with Mr. Eckstein
20 that if we had to raise these issues prior to the sale, that it
21 would create a substantial cloud on the sale going forward. So
22 what we've determined to do is to maximize the sales proceeds
23 instead of minimizing them and perhaps winning a Pyrrhic
24 victory, winning the claim, and then not getting the assets
25 sold. So we thought that was a very reasonable approach going

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1 forward.

2 Your Honor, I'm going to do the best I can -- I've
3 taken lots of notes here of the various things that came up --
4 and try to cover them. If I've forgotten anything or if you
5 think the answer's already been provided to you, I would just
6 ask that you respond accordingly. Let's just see here.

7 First of all, Your Honor should know, vis-a-vis our
8 reviewing the settlement and contacting the certificate
9 holders, we have retained a financial advisor; we've retained
10 Duff & Phelps as our financial advisor. We think they are very
11 well qualified to do this. My understanding is that we now
12 have access to the data room, and we are moving forward. And
13 we are told that this time frame will be a time frame within
14 which we will be able to make our evaluation.

15 In terms of getting in touch with our certificate
16 holders, we are going to provide a very substantial and robust
17 notice to them that we will be sending out, I believe it's the
18 22nd. We are also going to hire a facilitator --

19 THE COURT: 22nd of which month?

20 MR. SIEGEL: Of August. It's the 22nd, right?

21 UNIDENTIFIED SPEAKER: I'm looking now. Yes, it is.

22 MR. SIEGEL: We are also going to hire a facilitator.
23 What I mean by that is there are companies that will make sure
24 the notices get to people to the extent they can; because,
25 again, we believe it to be very important that people know

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1 what's going on. This will also be posted. It will be
2 advertised. We will do what we can to make sure that people
3 get the notice that they need.

4 Part of the time frame established for the motion is
5 related to the amount of days we think is reasonable, based
6 upon traditional practice for corporate trustees between
7 sending the notice and the objection period. And we have built
8 that into the schedule as well. It is important to us, and we
9 think it's important to the certificate holders, that if they
10 have issues with respect to this settlement, that they have an
11 opportunity to express those before this Court and for us to
12 hear them, to see them --

13 THE COURT: How active is the market for trading of
14 these certificates?

15 MR. SIEGEL: It's not clear to me. I can tell you
16 that most of this paper was held in institutional hands,
17 traditionally. We have been receiving some calls from some
18 hedge funds. So they are starting to get some of this paper.
19 I do not know if anyone is going to be in a position to provide
20 a critical mass or a direction to any of us with respect to
21 this.

22 From our standpoint, this is not going to be a squeaky
23 wheel issue. It's not going to be whoever makes the most
24 noise, that's what we're going to do, particularly because
25 there are so many trusts involved. From our standpoint, is we

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1 are going to do a reasonable, studied review of this
2 settlement. We're going to figure out whether or not these
3 numbers make sense. And by the way, we've also reserved on the
4 allocation between the trusts, which is very important as well.

5 We are going to look at the objections that are filed.
6 We're going to determine in connection with those objections
7 whether or not they alter our means of looking at the
8 settlement as well. And we're going to make a reasoned
9 decision. And we're going to ask this Court to make a finding
10 with respect to that decision. But be sure we take this very
11 seriously. We want to hear from our certificate holders. And
12 we worked very hard to give them the most reasonable amount of
13 notice, under the circumstances that we're presented with.

14 There is a very strong sense that this needs to be
15 done prior to the sale. And we have now been able to
16 accommodate that timing, for among other reasons, the
17 willingness of the stalking-horse bidder to adjourn this for
18 two weeks. That -- given the shortness of time, two weeks can
19 even be a lot of time here.

20 The other thing I just would mention for the sake of
21 clarification is that there are two universes of trusts here.
22 There are the trusts to whom the settlement is being offered
23 and the trusts to whom the settlement is not being offered.
24 With respect to those trusts who have the opportunity to
25 settle, they're going to be subject to the cap.

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1 We have basically created a process where those other
2 trusts will ride through. Their rights, other than this
3 deferral that we've agreed to, will be unaffected. Now, having
4 said that, just so the Court has comfort, the debtor has
5 advised us that given the nature of those trusts, that they
6 expect that the amount of potential put-back claims dwarfs the
7 amount that we're talking about here; that it's not a
8 significant amount.

9 It's important to the trustees that we try to resolve
10 those claims as well. But we do not see the urgency nor do
11 other parties see the urgency of resolving that prior to the
12 sale. However, that will be hopefully before Your Honor
13 relatively quickly, in the form of a settlement that will
14 happen post-sale, down the road; because we want to clean this
15 up. We want to have as many allowed claims as possible down
16 the road. And Your Honor should expect, if all goes well, that
17 that will be before you late this year or early next year.

18 Now, I'm not sure, but I think I've covered at least
19 what I put on my notes. So if Your Honor has other questions,
20 I'm happy to answer them.

21 THE COURT: I don't.

22 MR. SIEGEL: Thank you, Your Honor.

23 THE COURT: Thank you very much, Mr. Siegel.

24 Anyone else wish to be heard?

25 MS. TOMASCO: Your Honor, on the phone.

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1 THE COURT: Why don't you hold off; let me get the
2 people in the courtroom and then I will absolutely hear you on
3 the phone, okay?

4 MS. TOMASCO: Thank you.

5 MR. WOFFORD: Your Honor, good afternoon. Keith
6 Wofford from Ropes & Gray on behalf of the RMBS certificate
7 holders, often referred to as the institutional investors.

8 Just following up on some of the remarks of the
9 debtors and the committee and implications of the Court, some
10 of them refer to the schedule for this 9019, whether as
11 originally posited or as put forth in the schedule, as
12 aggressive. But in fact, the proposed schedule, both initial
13 and current, is somewhat reflective of the foresight of the
14 debtors in this case.

15 The debtors knew, Your Honor, from their initial
16 diligence as well as from their discussions with us that the
17 complications of effectively transferring the servicing
18 platform without a resolution of the putback claims was almost
19 like a Rubik's cube to solve. And the settlement was a means
20 to try to avoid that Rubik's cube. As a result of the
21 complications, the debtors initially sought the schedule and a
22 scheduling track that would allow the putback claims to be
23 resolved before the sale hearings. What has changed between
24 that initial motion and now is that we've gotten consensus from
25 other major constituents in the cases that in fact the

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1 rationale behind that schedule, and in fact the way to solve
2 that Rubik's cube is, in fact, to get the settlement forward
3 and done -- hopefully done, at least with all the reservations
4 of the parties-in-interest.

5 Despite the complexity that Your Honor refers to in
6 this order -- and I won't use the term scheduling order for a
7 fear of prejudicing anyone -- the fact of the matter is it is
8 that complexity that allows this to be resolved in a way that
9 effectively preserves the rights of the parties, as the
10 committee noted, while allowing the sale to go forward at the
11 same time, bringing the value into the estates, which we as
12 investors have ultimate interest in, as well as everyone else
13 here.

14 With respect to the one particularized question, Your
15 Honor, that I would like to answer, the view of the investors
16 is that a 9019 is not required from this motion because in fact
17 this is not compromising or settling any claims on behalf of
18 the estates. There certainly are some concessions that are
19 being made by the trustees, but what this is doing is
20 preserving an opportunity for a later day for those claims to
21 be litigated. And as the committee rightly noted, it's
22 effectively a downward ratchet from a threshold that protects
23 the trustees, but then actually ratchets downwards so there
24 isn't undue prejudice to the unsecured creditor pool.

25 With that, Your Honor, I don't think I'd say anything

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1 further, other than that the institutional investors support
2 the schedule and the trustees' entry into it.

3 THE COURT: Thank you, Mr. Wofford.

4 Anyone else wish to be heard?

5 MR. SHORE: Good afternoon, Your Honor. Chris Shore
6 from White & Case on behalf of the ad hoc group of junior
7 secured notes.

8 Your Honor asked a couple of questions, and you got a
9 couple of answers on the administrative expense priority. We
10 negotiated and got put in -- at least for the junior secured
11 notes -- paragraph 22 in the order, which sets forth that
12 whatever administrative expense priority is ultimately allowed
13 is not going to affect the nature, extent or priority of the
14 claims of the junior secured noteholders.

15 THE COURT: Thank you.

16 Anyone else wish to be heard?

17 Anyone on the phone?

18 MS. TOMASCO: Your Honor, this is Patty Tomasco on
19 behalf of Frost Bank.

20 THE COURT: Okay. Go ahead.

21 MS. TOMASCO: I just -- and I apologize, but I'm
22 getting this order on Friday afternoon, and the original order
23 basically preserved the rights of counterparties to executory
24 contracts that were not RMBS trustees and people involved in
25 the settlement. And so I would just like some clarification on

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1 a couple of paragraphs that have nothing to do with the
2 settlement, but just whether or not they apply to
3 counterparties to assume servicing contracts that are not RMBS
4 contracts.

5 Beginning on page 4, it says that fact discovery
6 responses are due in ten days, but it doesn't specify whether
7 or not that applies to non-RMBS counterparties who are
8 otherwise objecting to the sale motion.

9 THE COURT: Let me stop there.

10 Mr. Princi, can you address that?

11 MR. PRINCI: It does, Your Honor. It does.

12 THE COURT: The same schedule --

13 MR. PRINCI: The same schedule --

14 THE COURT: The deadline applies.

15 MR. PRINCI: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. TOMASCO: And so that does apply, and the non-RMBS
18 counterparties also have the benefit of the shortened discovery
19 response time?

20 THE COURT: Yes. The schedule has got to apply. If
21 the deadline applies for objections, the same shortened time
22 for discovery has to apply.

23 MS. TOMASCO: Thank you, Your Honor.

24 It says on page 6 in paragraph 15, it says that the
25 debtor shall provide the RMBS trustees and the creditors'

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1 committee all the performance-based information they have
2 received by Nationstar. Frost Bank also has a servicing
3 contract that the debtors proposed to assume and assign to
4 Nationstar, but they're not included in this disclosure. I was
5 wondering if any other counterparty to a servicing contract
6 could be added to that paragraph?

7 THE COURT: Mr. Princi?

8 Which paragraph -- just so I'm clear, what --

9 MR. PRINCI: Your Honor, this is paragraph 15. Your
10 Honor --

11 MS. TOMASCO: 15.

12 MR. PRINCI: Yes. Your Honor, this arose specifically
13 in connection with the issues that these parties are raising
14 with us. I would -- rather, Your Honor, than have other
15 parties start to use this to make and have us deal with any
16 information requests, I would recommend that counsel contact my
17 office. We don't stand on principle when it comes to
18 information requests; we're happy to provide information
19 without the formality of formal discovery requests. But I
20 don't think any of the parties here now, Your Honor, want to
21 start to alter these terms to start having other parties use
22 this to make information requests.

23 MS. TOMASCO: Well, I would comment, Your Honor, that
24 Frost Bank did raise specifically the same objection to the
25 identity of the purchaser, in particular with respect to

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1 whether or not the purchaser such as Nationstar would meet the
2 financial requirements so as to provide adequate assurance of
3 future performance, in particular, whether or not they meet the
4 financial criteria that's in the servicing agreement.

5 And so I'm not just a random other counterparty; my
6 client is not. We raised the exact same objection as the RMBS
7 trustees did. I'm happy to send the request. I just want to
8 make it clear that we're not a lessor or some other person. We
9 have a similar agreement to the RMBS trustees; they're just not
10 in the securitization itself.

11 MR. PRINCI: Your Honor, the debtors will provide that
12 information; that's not the issue. All I'm saying is we don't
13 want to start to alter this particular proposed order. But I'm
14 happy to say on the record we have no problem providing the
15 information, in terms of memorializing this. If counsel can
16 just contact my office, this will not be an issue.

17 THE COURT: Why don't you contact Mr. Princi or his
18 colleagues. If you can't resolve the issue satisfactorily to
19 Mr. Princi, you can arrange a conference call with the Court
20 and we'll try and address it. There was a lot of work that
21 obviously went into this proposed order. I don't undere -- I'm
22 not giving short shrift to the issues you're raising; I think
23 they're important. Let's see whether you're able to resolve
24 them with Mr. Princi, and if you can't, you can come back and
25 ask for help from the Court, okay?

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1 MS. TOMASCO: Thank you, Your Honor. I just wanted to
2 clarify that the other fact discovery provisions of the order
3 are equally applicable to non-RMBS --

4 THE COURT: Yes. It must be.

5 MS. TOMASCO: Okay. Thank you, Your Honor.

6 THE COURT: The objection deadline -- if the other
7 deadlines apply, the discovery deadlines need to apply.

8 MS. TOMASCO: Thank you, Your Honor.

9 THE COURT: Thank you.

10 Anyone else on the telephone wish to be heard?

11 MR. MOAK: Your Honor, Paul Moak on behalf of Freddie
12 Mac.

13 THE COURT: Yes. Go ahead.

14 MR. MOAK: I had a question similar to those raised by
15 Frost Bank's counsel. In particular, it is how the parties
16 reconcile this proposed scheduling order with the Court's
17 previously entered sales procedure order for parties that are
18 not RMBS trustees, like Freddie Mac. And for example, the
19 sales procedure order established a cure objection deadline of
20 September 28th, and a deadline to object to the sale
21 transaction generally by October 29th. And it's unclear to
22 me -- even after the discussion we've had -- about whether, for
23 example, the pre-auction objection deadline alters that
24 schedule in any way for parties other than RMBS trustees.

25 For example, in paragraph 16 it reads "except as

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1 limited by this paragraph, on or before August 23rd the
2 committee, the RMBS trustee or any other party-in-interest may
3 file any pre-auction objections". And I guess the "may" makes
4 that permissive rather than compulsory, so maybe it's not an
5 issue. But I just need some clarity on whether parties other
6 than RMBS trustees are expected to -- are required to file what
7 are labeled as "pre-auction objections" on or before August
8 23rd. Because, for example, one of those potential objections
9 is an objection to the ability of the proposed assignee to
10 perform under the assumed servicing agreements, which I've
11 heard interpreted to mean you need to file objections to
12 adequate assurance as a pre-auction objection. So it was
13 unclear to me how this impacts the previous sales procedure
14 order.

15 THE COURT: Mr. Princi?

16 MR. PRINCI: Your Honor, and that's a very fair and
17 understandable set of questions. So to clarify, Your Honor,
18 none of the provisions in the previously issued what we call
19 sales procedure order are intended to be affected by this
20 order, except as expressly provided; and let me say what I mean
21 by that. So for example, we're now going to have the hearing
22 on the sales motion move from November 5th to November 19th.

23 With respect to the specific deadlines that are set
24 forth -- and there are a number of them -- in the sales
25 procedure order for dealing with cure claims and the like,

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1 those remain in effect. Paragraph 16 is designed specifically
2 for the RMBS trustees, but we felt, Your Honor, all the parties
3 felt that we shouldn't preclude any other party who may want to
4 also file any similar sorts of claims from doing so by that
5 date so there would be an orderly timetable for those types of
6 questions, but --

7 THE COURT: So the "may" means may.

8 MR. PRINCI: May.

9 THE COURT: It doesn't mean "shall".

10 MR. PRINCI: "May" means totally "may". We are not
11 looking, Your Honor, to otherwise revise the specific schedule
12 set forth in the sale procedure order.

13 THE COURT: Mr. Moak, are you satisfied with that
14 answer?

15 MR. MOAK: I am, Your Honor. Thank you.

16 THE COURT: Thank you.

17 Anybody else on the phone wish to be heard?

18 Anybody else in the courtroom?

19 All right.

20 MR. PRINCI: Your Honor, if I may?

21 THE COURT: Go ahead, Mr. Princi.

22 MR. PRINCI: Thank you. Very briefly, Your Honor.

23 Your Honor raised something that I think is important
24 earlier. And you talked about the parties would be wise to
25 confer informally, if you will. Your Honor, notwithstanding

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1 how it may have appeared from the last time we were here -- and
2 indeed, it may have appeared that we don't converse regularly
3 enough -- the truth is -- and I'll let anybody here who
4 disagrees with this, obviously, inform you -- the truth is the
5 trustees and we have been regularly communicating about things.
6 We regularly communicate with the committee about these sorts
7 of things, Judge. And so, Your Honor, from the debtors'
8 vantage point we're going to continue to seek to communicate
9 with the parties.

10 What's going to happen, Judge, in terms of the
11 finality of their decisions, it's not going to -- it's going to
12 evolve. This is not going to be a lightning strike at the
13 deadline. So directionally, Your Honor, people are going to
14 start to get a sense through what they're hearing from their
15 financial advisors of whether they think that they're likely
16 moving towards an agreement with the debtor and the
17 institutional investors' assessment of what is a fair
18 settlement or not. And no doubt, Your Honor, we are all
19 motivated to talk about that beforehand. We all have our
20 independent but parallel motivations that will lead us to be
21 speaking to each other, Your Honor, prior to these deadlines.

22 So I did want to just note that.

23 THE COURT: Mr. Princi, I know you talk to each other,
24 but -- although last week's hearing might suggest otherwise --
25 but with everything you have going on -- and I recognize

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1 there's an enormous amount going on; there are a lot of moving
2 pieces to this -- sometimes the formality of knowing that there
3 is a regularly scheduled, periodic meeting -- which may wind up
4 getting cancelled if everybody agrees to cancel it -- assures
5 that issues won't get lost in the shuffle. I'm not requiring
6 you to do it at this stage, okay. But I just -- we spent two
7 and a half hours at a hearing last week talking about a
8 schedule. That was nuts.

9 Okay, if it took two and a half hours of court time to
10 talk about a schedule, what about the real issues? And the
11 stipulation that you've submitted has a got a lot of real
12 issues; there are real substantive things that are built into
13 it. I think that you and the other counsel need to talk and
14 need to try and work out -- and maybe you've got to get to the
15 middle or end of August for it to really make sense to have.
16 But I really think you need -- and I may at some point order
17 that it happen that there be time scheduled -- if not every
18 week, every other week -- for face-to-face meetings where you
19 all sit in the room so you know there's no misunderstanding
20 about what issues.

21 It's without prejudice. If Mr. Siegel doesn't raise
22 an issue at a particular meeting he's not foregoing raising it
23 at a later time, or vice versa, or the committee -- whatever.
24 But you all ought to agree that the meetings are off the record
25 and that it's not going to get quoted back to the Court that he

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1 said, she said, et cetera. But you need to have a regular
2 dialogue, because I'm really concerned, with an aggressive
3 schedule, you're going to get toward the end of this process
4 there's not going to be enough time built in to try and get
5 issues resolved. That's end of speech on that.

6 MR. PRINCI: Okay. Your Honor, nobody can disagree
7 with that suggestion. So what we'll do, Your Honor, we will
8 consult with the parties. Without committing anybody, Your
9 Honor, we'll probably be suggesting that we give some people --
10 we give everybody an opportunity to get their arms around the
11 facts. And then probably -- let's say mid --

12 THE COURT: I'm going to leave it to you. I'm not
13 dictating what you're going to do.

14 MR. PRINCI: -- mid-September we'll start to arrange
15 that, Judge.

16 THE COURT: I think you've all heard what I'm trying
17 to communicate.

18 MR. PRINCI: Okay. Real quickly, Judge, just -- I had
19 mentioned before and I wasn't able on my feet to locate it, but
20 just so that I point Your Honor to the correct provision, in
21 paragraph 2, page 4, in addition to filing the supplement by
22 August 15, we're also going to be filing a revised proposed
23 order. And that's what I was referencing earlier, Judge.
24 We're going to be working with both the committee and in
25 particular the trustees to try to make sure that when we do get

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1 to this hearing everybody's working together -- on the
2 assumption that there hasn't been some sort of a major
3 schism -- that everybody's working together to make sure that
4 we get all of the issues that need to be resolved, for which
5 then we'll ask the Court for appropriate findings of fact. So
6 that's what I was referring to earlier.

7 One last thing, Judge. And I think just to echo what
8 Mr. Eckstein was saying in terms of what's likely to happen,
9 and then what happens if the likely doesn't happen. In terms
10 of what's likely to happen, you were asking what if no trusts
11 opt in. Again, Judge, we are hopeful. We are hopeful that
12 having the number of institutional investors with respect to
13 the amount of debt that they hold providing their views in
14 writing to the trustees will lead the trustees to not end up
15 with no trust opting in. But to answer your question --

16 THE COURT: It was just a hypothetical question.

17 MR. PRINCI: But if no trusts opt in, Judge, then what
18 we'll have, fortunately by virtue of this we'll have had the
19 sale at least go forward, so we'll have a lot of proceeds in
20 this estate. But we'll have a freefall when it comes to claims
21 resolution, and we'll deal with it accordingly.

22 THE COURT: Okay. Anybody else have anything else
23 they want to add?

24 All right. We're adjourned. Thank you very much,
25 everybody.

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1 MR. PRINCI: Thank you, Your Honor.

2 Your Honor, one housekeeping item. I'm sorry.

3 THE COURT: Yes.

4 MR. PRINCI: We'll be submitting to you, Your Honor,
5 tomorrow, after we have a chance just to consult with
6 everybody, a revised form of order that will change the title.
7 And then we'll also send a disc down accordingly, Judge.

8 THE COURT: Thank you very much.

9 MR. PRINCI: Thank you, Your Honor.

10 THE COURT: All right.

11 (Whereupon these proceedings were concluded at 4:36 PM)

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2 C E R T I F I C A T I O N

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4 I, Penina Wolicki, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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9 *Penina Wolicki*

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Date: July 31, 2012

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